EXHIBIT B

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

venBIO SELECT ADVISOR LLC, a Delaware limited liability company,	:	
Plaintiff,	:	
v	:	Civil Action No. 2017-0108-JTL
DAVID M. GOLDENBERG, BRIAN A. MARKISON, ROBERT FORRESTER, JASON ARYEH, CYNTHIA L. SULLIVAN, GEOFF COX, BOB OLIVER, and SEATTLE GENETICS, INC., a Delaware corporation,	:	
Defendants,	:	
and	:	
IMMUNOMEDICS, INC., a Delaware corporation,	:	
Nominal Defendant.	:	

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Chancery Courtroom 12B
Leonard L. Williams Justice Center
500 North King Street
Wilmington, Delaware
Thursday, March 9, 2017
10:32 a.m.

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BEFORE: HON. J. TRAVIS LASTER, Vice Chancellor.

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RULINGS OF THE COURT FROM ORAL ARGUMENT ON PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

APPEARANCES:

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-and-
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-and-
BRIAN T. FRAWLEY, ESQ.
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THE COURT: All right. Welcome back, everyone. Please take your seats.

I want to thank you all again for your presentations and for everyone for being here today. In the interests of time and the exigencies presented, I'm going to go ahead and give you my ruling now.

We're here on an application for a temporary restraining order brought by venBio Select Advisor against Goldenberg and other defendants. I am granting that application but only in part. I'm doing so primarily because the defendants took action to waive a closing condition that eliminated a window for postclosing review that I relied on when not originally authorizing a full-blown expedited proceeding when we were first together.

Pending a hearing on an application for preliminary injunction, which I expect to happen in approximately 30 days -- so give or take four weeks -- the defendants are restrained from closing the Seattle Genetics transaction. As I hope is apparent from what I just said, I am treating this as a TRO application. The defendants have argued somewhat in passing that I should treat the application as one for full-blown preliminary

injunctive relief. But that is generally done only when a party has had some opportunity for discovery. In this case, there have been a series of procedural situations that have combined to deny the plaintiffs any opportunity for meaningful preapplication discovery. So I'm evaluating this under the TRO standard.

I'm now going to provide you with some factual background. This recitation is necessarily preliminary and tentative. It should not be taken as anything approaching definitive findings of fact. It represents my view at this point, based upon the limited record that I have, which, as I just noted, is without the benefit of discovery.

Defendant Immunomedics, which I will call generally the Company, is a clinical drug development manufacturer. One of the Company's assets is a developmental cancer drug that the parties refer to as IMMU-132. The story begins in 2015 when IMMU-132 began generating promising results. The question was how the Company would undertake and complete further trials and then bring a drug to market. This was a particularly significant question for the Company because in its history, it has never

successfully brought a drug to market.

The defendants stress that in December 2015 the Company's board started a process of looking for drug development partners for IMMU-132. It hired an outside advisor known as Torreya Partners to find a drug development partner who would engage in an outlicensing transaction with the Company. There are indications, preliminarily though they may be, that the Torreya-led process proceeded at a leisurely and ineffective pace. Everyone appears to agree that by summer 2016 the process had stalled.

During 2016 there also appears to have been disagreements between the Company and some large investors about how to pursue the drug development process. One of those large investors is the plaintiff, venBio, which is a public market investment fund focused on the biotechnology sector with approximately 1 billion in assets under management. venBio is currently the Company's largest stockholder, owning approximately 9.9 percent of the common stock.

venBio contends that during 2016 Company management made a series of missteps that significantly delayed the drug's development. It is a

fact that during 2016 the Company's stock price fell approximately 35 percent. venBio asserts that it engaged with Company management during this period and made its concerns known, including its disagreements with the Company's strategy.

In September 2016, the board restarted the process by hiring a new advisor, Greenhill & Company. Greenhill was charged with not only considering an outlicensing transaction, but also other strategic alternatives.

At the time the Company planned to hold its annual meeting on schedule on December 2016. As matters existed in fall 2016, the annual meeting did not figure prominently in the timeline for finding a drug development partner. That was because the Company's directors expected to be reelected without opposition at an uncontested meeting. Under the timeline that under consideration, the Company expected to undergo a process that hopefully would result in a transaction at some point in the first quarter of 2017.

The Company's plans went awry on November 16, 2016, when venBio announced its intent to nominate four directors for election at the annual

meeting. It's worth noting that at the time the company's board consisted of five seats, three of which were filled. Two were held by David Goldenberg and his wife Cynthia Sullivan. Goldenberg founded the Company in 1982 and has served continuously since then as the Chairman of the Board. He's also currently the Company's Chief Scientific Officer and Chief Patent Officer. Sullivan is the CEO and President. venBio alleges that they received significant financial benefits and other consideration from the company.

The third seat was held by Brian Markison, who appears to be an outsiders.

My impression is that the possibility of losing control at the annual meeting prompted the incumbent board to reassess its timeline and to take a series of actions. I'm satisfied at this preliminary stage that those actions have to be viewed as reactive to the contested proxy solicitation and, hence, with the overlay of conflict that permeates those types of decisions. The authoritative discussion of those conflicts remains the Aprahamian decision.

The board's first step was to postpone the annual meeting until February 16th, 2017. A small stockholder, unaffiliated with venBio and

represented by a firm from the traditional plaintiffs' bar, filed suit to challenge the postponement. I declined to schedule a challenge to the postponement. I indicated at the time, and I continue to believe, that the initial postponement was a reasonable step to allow stockholders to receive information about and make decisions regarding what had suddenly become a contested situation.

The board then began doing more significant things. In December, the company expanded Greenhill's role to include defending against venBio's proxy contest. The engagement letter contemplated a contingent fee of $1.5 million, offset by a monthly retainer of $150,000 per month. That engagement letter was entered into with the Company's outside counsel, Vinson & Elkins, rather than with the Company itself.

venBio had nominated four individuals with significant business qualifications and industry expertise. So the next step for the board on January 9, 2017, was to expand its size to seven and add four new directors. The four new directors were themselves industry figures. I think it's readily inferable at this stage that the

incumbents recognized that a meaningful number of stockholders were dissatisfied or at least concerned about the leadership of a board dominated by the founder and his wife and that by enlarging the board and bringing on new directors, they sought to blunt that campaign plank. Expanding the board also meant that venBio's nominees would constitute a board majority, if elected, but they would be only a bare majority and not the only people in the boardroom.

In early February 2017, each proxy advisory firm separately recommended that the investors vote for venBio's full slate.

On February 9, 2017, a preliminary count of proxies submitted to date indicated that the incumbent directors would lose the election and that venBio's nominees would win and take control. That evening the incumbent board did four things. First, they cut short the ongoing strategic process and entered into a development and license agreement with Seattle Genetics. At the time, the process was still active, with 12 potential counterparties exploring a deal with the Company and at various stages of involvement. Second, they postponed the annual meeting from February 16th until March 3rd. Third,

they amended the Company's bylaws to change the rules for the voting process such that directors would be elected by plurality rather than a majority of votes. Fourth, they amended the bylaws to provide for mandatory advancement, and they entered into indemnification agreements with the incumbent board members.

The Company announced the licensing deal and the second postponement of the annual meeting on February 10th. The bylaw amendments were not disclosed until February 16.

The licensing deal is, by any measure, a transformational transaction for the company. It is, I think, facially dubious in such a situation to cut short an active process involving multiple suitors, and I think it is not coincidental that that occurred on the same day that the preliminary count of proxies indicated that the vote was running against the incumbents. At least at this stage of the case, I am not willing to accept that that was mere happenstance.

I really am not in a position to express any meaningful view on whether the licensing deal is a good transaction for the company or not.

The amount of the consideration is certainly facially large, and the defendants have harped on that fact. venBio has responded, however, that this has to be looked at on a relative basis, which I think is quite logical, and that the economics are poor for a licensing deal involving a potential blockbuster drug candidate like IMMU-132. venBio has relied for this proposition on the views of an expert firm. One example is that they contend that 63 percent of the value from the transaction is captured in the royalty streams but that the royalty rates for the deal are approximately 50 percent lower than market.

The defendants have come back with further analysis from Greenhill, but at this point I'm, frankly, inclined to discount Greenhill's views because of their dual role and their multimillion-dollar incentives to favor a transaction as part of their two engagements for the Company.

As with the appointment of the outside directors in January 2017, it seems to me at this preliminary stage that the signing up of the deal was likely an effort to take away what would have been venBio's major election plank. venBio had criticized management for how it was handling the drug

development process and whether it had the ability to take control and carry out that task. By signing up the licensing deal and then postponing the meeting, the incumbent board could claim that they had responded to those criticisms and eliminated the need for new directors to come in and do what the incumbents had already done.

What is particularly important for present purposes is that all this happened just six days before the stockholders would decide on the composition of the board that they wanted to determine the Company's future. Under the circumstances, given this constellation of facts, I think it is readily inferable, and particularly inferable for purposes of a temporary restraining order, that the defendants acted, at least in part, for the purpose of affecting the election contest and because they believed that they knew better than the stockholders who should determine the future path of the Company and what it should be.

The announcement of the licensing deal prompted venBio to file suit. Among the relief venBio sought was an order maintaining the status quo by enjoining the Company from postponing the annual

meeting for a third time or changing the meeting's record date. They also sought an order preventing the closing of the Seattle Genetics transaction until after the election of a new board. In response, the Company made the following representations. I'm going to quote. "As to the annual meeting itself, Immunomedics agrees to hold the annual meeting of stockholders on March 3rd, 2017; agrees not to postpone, adjourn, or otherwise delay it without Court approval, and agrees it will not change the record date, thus mooting Count IV of the complaint."

On the morning of February 16th I held a telephonic conference. Based on the defendants' representations, I determined that there was no need for a hearing on venBio's request for immediate injunctive relief, but I ordered the defendants to produce the licensing agreement, as well as relevant board minutes and board mentions so that venBio could assess the matter and figure out whether, notwithstanding the Company's representation, some type of immediate relief was needed.

That prompted a renewed conference with the parties on February 17th. This conference was to address the possibility that the Seattle

Genetics transaction might close before the annual meeting. During the teleconference, the defendants represented that they would not close until March 8th, which was after the annual meeting. venBio noted that after the election, there would be no need for emergency relief because Section 14.1(ii) of the license agreement provided that the absence of litigation was a condition to closing. Consequently, in the event that venBio's slate won the election, as they were then anticipating, the new board could determine not to close until the litigation was resolved.

I went through various hypotheticals as to what might happen under certain circumstances and whether we would really need a hearing and when we wouldn't. And all of these scenarios took into account the existence of the closing condition as a protection against the need for an imminent hearing. No one from the defense side took issue with the various sequences that I was contemplating.

Hours later, the Company filed suit in the United States District Court for the District of Delaware seeking a declaration from the federal court that it was entitled to reset the date for determining

the stockholders of record eligible to vote at the annual meeting. And the Company asked the federal court to issue injunctive relief. They wanted an injunction that "requires venBio to either (i) withdraw its request made in the Chancery Court action for Immunomedics' annual meeting to take place on March 3rd, 2017 or (ii) stipulate in this action to Immunomedics' right to move the date of the annual meeting to a date at least 30 days after venBio has made the corrective disclosures."

The defendants stressed to the District Court, and have argued to me, that they filed this action because they believed that the federal claims had to be heard in federal court. That is somewhat inconsistent with the fact that they've now filed a 225 action that seeks to litigate similar claims in this court.

They've also stressed that after filing suit, they sent me a copy. Particularly in front of the federal court, they took solace in the fact that I didn't haul them in after receiving it. I don't know why I would have done that. Under the Supremacy Clause, a federal court outranks me. I don't go around telling federal judges what to do,

particularly about matters of federal law. Not only that, but it's particularly true when it's Judge Len Stark, whom I've known for years. Frankly, if I had a choice as a litigator between Judge Stark and me, I'd pick Judge Stark. So I wasn't about to try to corral you-all in here and take you away from the benefits of Judge Stark's learning. So I decided to wait and see what would happen.

What happened is that on February 20, 2017, without providing any prior notice to the plaintiff or the Court, the Company agreed to amend the license agreement to waive the closing condition, apparently for no consideration. The existence of that condition is what we had discussed during the hearing on February 17th as the reason why a full-blown expedited premeeting proceeding was not necessary.

On March 2nd, 2017, following briefing and over two hours of oral argument, Judge Stark declined to grant any injunctive relief. He found that the Company had failed to make out any of the elements of the injunction standard, including failing to establish a reasonable probability of success on the merits of its claims.

On March 3rd the Company's stockholder voted to elect venBio's four nominees. They were the only director candidates who received a majority of the votes.

The defeated members of the incumbent board have subsequently filed suit under Section 225 of the DGCL to challenge the results of the election. They've asked for a status quo order that would permit them to remain in office until the final resolution of the claims that they brought in federal court and have recharacterized in state court and which the federal court has already said have no reasonable probability of success.

The status quo order is not before me today, but I will comment on it at the end of this ruling.

venBio then filed an amended complaint and pursued this TRO application. They seek a series of relief, including an order "(i) directing that the Inspector of Elections certify the results of the election of directors based upon the votes at the annual meeting immediately following the annual meeting; (ii) enjoining defendants, their agents, and all persons acting in concert with them from taking

any further action to impede or interfere with venBio's nominees being seated as the validly elected board, and compelling defendants to recognize and abide by the result of the election of directors at the annual meeting, including certifying the results and taking all actions necessary to seat the rightfully elected directors; (iii) enjoining defendants from continuing to act or purport to act as directors of the Company, including expending any funds or otherwise utilizing the Company's assets without the approval of the rightfully elected board; (iv) declaring the plurality bylaw amendment invalid; and (v) enjoining defendants, their agents and representatives and all other persons acting in concert with them from taking any actions in furtherance of closing the Seattle Genetics transaction until further order of this Court."

The bulk of this relief is not suitable for consideration on the present record or within the framework of a TRO application. I will not enter a TRO directing the Inspector of Election to certify the results. I also will not enter a TRO compelling the defendants to recognize and abide by the results of the election of directors at the annual

meeting. Both are forms of mandatory relief. That would require the equivalent of a summary judgment record before they could be granted.

I also won't enter an order in this action enjoining the defendants, their agents and persons acting in concert with them from impeding or interfering with venBio's nominees being seated as the validly elected board, or enjoining the defendants from continuing to act or purport to act as directors of the Company, et cetera. These forms of relief are prohibitive, but I think they're best addressed initially through the status quo order in the Section 225 action and later through a grant of final relief in that action.

I have considered entering a TRO that would enjoin the effectiveness of the plurality bylaw amendment. That amendment changed the rules for the vote in the midst of the election contest because without that amendment, a director who didn't receive more than a majority vote would be a holdover director. And as venBio points out, the Company could hold a new meeting to fill their seats. With the amendment, a director who does not receive a majority vote is, nevertheless, a validly elected

director who is entitled to serve out a term unless earlier removed. But I don't think the plurality bylaw meaningfully affects the application today, and I think its interim utility is best addressed in the status quo order and ultimately in the 225 action.

So this leaves the application to enjoin the defendants, their agents, representatives, and people acting in concert with them from taking any action to close the Seattle Genetics transaction. As I said at the outset, that relief I am granting pending a preliminary injunction hearing.

To obtain a TRO, the moving party must demonstrate a colorable claim, a threat of irreparable harm, and, as always, show that the balancing of the hardships favors equitable relief. I personally continue to regard Cottle v Carr as the authoritative statement of that standard, although everyone in this case seems to like more recent decisions.

venBio has stated a colorable claim that the terms of the licensing deal are subject to intermediate scrutiny because the board entered into the transaction during an active proxy contest with defeat looming, with the goal of taking an issue away from the insurgents by locking down the asset the

insurgents were running to control and taking away one of their election planks.

Aprahamian and Mercier teach that when incumbent directors act to affect the outcome of a proxy contest, they act against a specter of self-interest. This self-interest is not so strong as to warrant the triggering of entire fairness review, but it is also not so weak as to comfortably allow business judgment review.

venBio has stated a colorable claim that the directors' self-interest in prevailing in the proxy contest tainted their decision to enter into the licensing agreement and resulted in terms that were, at a minimum, suboptimal for the Company and its stockholders in light of their self-interest. They have provided expert analysis indicating that the terms of the agreement, while facially large, are less than what a nonconflicted negotiator could have achieved. They also have called into question the incentives of Greenhill by outlining its doubly contingent fee structure.

It is true that the license agreement is not a blatant and obvious attempt to interfere with the stockholder vote by issuing voting shares,

changing a vote standard, or taking other action that directly affects the rules of the election. The plurality amendment was that, but the licensing deal was not that. The licensing deal was more subtle. But subtlety does not take conduct beyond the realm of equity. That is precisely where the flexibility of a court of equity is needed.

When I look at the totality of the circumstances here, I think it is colorable the defendants entered into the license agreement when they did, on the day they found out the vote was going against them, thereby cutting short an active process, because of the specter of self-interest and in an effort to win an election that they knew they were losing. I also take into account they did other things contemporaneously, such as changing the rules by adopting the plurality bylaw and adopting other personally beneficial provisions such as the advancement bylaw and the indemnification agreements. I'm also influenced by subsequent behavior such as the waiver of the litigation condition.

In response to this, the defendants have advanced some formulaic and simplistic arguments. They first assert that because entrenchment cases are

generally derivative, this case has to be analyzed as a derivative case and subject to Aronson for purposes of demand futility. But this is an entrenchment allegation in the context of an active voting contest where it is certainly colorable that the directors took the action they did to interfere with how the stockholders would vote. So, in my view, it is colorably direct and, in any event, subject to review under enhanced scrutiny.

The defendants' formulaic argument about the derivative nature of the claim is one of the examples of attempting to legalize, i.e., make subject to legal rules and, hence, ossify a mechanism, a flexible mechanism, that developed in equity. That's the derivative action. I don't think the derivative action is so cabined. I also recall that the Chief Justice, while a member of this Court, wrote in Gaylord that even if Unocal claims are derivative, that fact, i.e., enhanced scrutiny, would defeat a Rule 23.1 motion. I would think the same reasons would apply all the more so when you're talking about a claim involving the stockholder vote.

Building on their Aronson argument, the defendants seem to think that only direct

self-interest is sufficient to taint the license agreement, and they stress that no conflict rising to that level exists. They also seem to think that defendants must be shown to have consciously sought to interfere with the election. I don't think either is true. I think the strength of the enhanced scrutiny analysis in these types of situations that give rise to structural conflicts like the election issue is it allows a court to act in the absence of evidence of direct interest or scienter. Certainly that's helpful if it is there, but it's not required.

Most simplistically, the defendants have made a series of timing arguments based on the idea that the search for a development partner began in December 2015 and that Greenhill was hired in September 2016. According to the defendants, this means that the board can't possibly have acted for entrenchment because venBio had not emerged when the board did these things. Now, in fairness, Mr. Reed backed away from that this morning and was a little more subtle and nuanced in recognizing that what venBio's arguing is that at the end of the process they accelerated and entered into the suboptimal agreement. But the briefs took this very strict idea

that because the process started before, it was incomprehensible that anything could have been affected by venBio.

So it's true venBio's theory is straightforward, but it's not nearly so simplistic. Their point is that the board accelerated its path and rushed the final steps of the process during the December through February time frame after the proxy contest launched. In other words, even if the process started earlier, it was moving ineffectively, it seems, under the Torreya regime, and then really hadn't gotten started in September under the Greenhill regime, but then when venBio emerged, things really started to press. And particularly when the vote tally came out, that's when the incumbents cut short the process, entered into an agreement, and attempted to take a plank away from the insurgents. That's all stuff that happens after venBio emerges in response to venBio.

Now, I want to reiterate at this point that this is a temporary restraining order and these are preliminary assessments on my part. So Mr. Reed argued this morning that the defendants acted in good faith because they truly believe that the transaction

is in the best interests of the Company, and he pointed to factors that support that. They may well have done that. Nobody should hear me as making a definitive holding that these folks acted for an improper purpose or that this is the final ruling in this case. We are here on a temporary restraining order. And so the question is what do we do now at this preliminary stage when it's impossible to do full-blown final fact-finding? My point and my view is that the plaintiffs have come forward with enough at this stage and that it is colorable, even somewhat more than colorable, that this is what happened. But once the evidence comes in and people get discovery, something else may certainly prove to be the case. I think it will be particularly interesting to know what these folks actually were told about the effect of the license agreement on the vote.

And in that regard, I think that's now at issue. I think the arguments that Mr. Reed made this morning are nice, they're interesting. But what they put at issue is what the board actually was told. And, frankly, what I don't want to hear is that because Vinson & Elkins retained Greenhill, all of a sudden Greenhill became an agent of Vinson & Elkins

for purposes of the attorney-client privilege so that no one can get discovery into what the board was told about the vote. Let's just nip that in the bud right now.

So the defendants have also relied, in terms of their bona fides, on the six-day go-shop and say that this validates the deal. At this preliminary stage, call me skeptical. Six days. That is incredibly short. And it's a context where it is conceded no one does go-shops in this industry. So it's not like people would be revved up and have a playbook to come in on a go-shop in this six-day window. At present, I don't think the logical inference is necessarily that the Seattle Genetics' offer was a blow-out bid. Maybe it was. It's described as such without citation in the papers. I guess it is with citation to the affidavit, but I don't know that's the case.

I think it is equally likely that Seattle Genetics was an incumbent trade bidder with a match right that gave it the equivalent of a right of first refusal; that other market participants looked at this and said "Six days, against somebody that's got a unique source of value, can match whatever we

do, and we come into a litigation? Why would I top on that?" It seems to me preliminarily that the other market participants in this process would not see a reasonable path to success within the six-day period, particularly when go-shops are uncommon in this space. So at least preliminarily, I don't think the absence of a topping bid has any implications for the pricing of the Seattle Genetics deal, and it's just too complex for me to wade into otherwise.

So for all these long-winded reasons, I think that there is a colorable claim challenging the Seattle Genetics deal.

Let's now turn to irreparable harm, which is the sine qua non of a TRO. In this case, I'm heavily influenced by two things. First, this is a highly complex transaction. It has lots of moving parts that depend on a lot of different future contingencies. This is not something where you're looking at a merger price and comparing it to valuing a Company, which, admittedly, is a hard thing to do, but at least you have a more set timeline. This involves multiple revenue streams that depend on the outcome of multiple future paths. I think it will be very difficult to construct some type of damages

remedy after the fact. Is it possible? Yeah, I'm sure it's possible. You guys can find really smart experts. But is it preferable? No. Is it highly difficult? Absolutely.

Second, I'm influenced by the fact that when we were previously together, I did not order full-blown expedited proceedings because I thought the litigation condition would allow the venBio nominees, if elected, to examine the transaction to determine what to do. The defendants then took matters into their own hands by waiving the litigation condition and changing the landscape on which the Court had originally acted. And this is a material difference because, as Mr. Teklits points out, with the condition in place, the decision not to close did not necessarily give rise immediately to breach. There was a condition with the objective fact of existing litigation that the venBio nominees, the new board members, could point to when declining to close. Now they're in a very different situation, at least as far as the condition goes. So this is a landscape changer, and it was done for a recitation of good and valuable consideration, but not actually any evidence of good and valuable consideration, in the

midst of active litigation over precisely that issue.

So under the circumstances, I believe a sufficient threat of irreparable harm exists to warrant a temporary restraining order blocking the transaction from closing until we can have a preliminary injunction hearing approximately 30 days from now.

Although not directly relevant to this application, the licensing agreement itself contemplates both injunctive relief and equitable relief. Those are in Sections 15.5 and 16.2(i). Obviously those are for contract parties, not for the type of application we're talking about here today, but the fact that the parties themselves would opt out of a strict damages remedy and specifically stress the availability of injunctive relief I think supports the entry of the injunction here.

Finally, there's the balancing of hardships. The overarching issue is that a deal for IMMU-132 is a unique opportunity for the Company. It's transformational. So, on the one hand, this is a unique opportunity for the new nominees to evaluate that deal and decide what to do. That favors injunctive relief to restore the situation that would

have existed had the litigation condition not been waived. Against that is the fact that the agreement's not going away. There's no drop-dead date. The litigation condition would have enabled the venBio nominees to do exactly what they want to do had it not been waived. So in terms of the parties, it strikes me that the balancing of hardship favors the plaintiffs.

Then there's this, frankly, offensive assertion that if I grant a TRO, I will have blood on my hands because it will cost people's lives. I am very sensitive to the fact that this is an important drug that is helpful to people, and I, of course, have no desire to cause anyone harm. But where was that imminent concern about deaths when the Torreya folks were walking through the process months ago? And where was that concern in September when Greenhill got hired with the idea was that they'd start up in November? Do not put this on me. Do not tell me that thousands of people will die if I grant this TRO. Do not tell me today that lives are at stake.

Not to mention, this is not a drug that is going to market tomorrow. This is a drug that still has to get approval, still has to go through

trials. We're still looking at probably a year-long path before it gets anywhere. We're looking at something where regulatory developments could shorten that path or lengthen that path. So to come in and essentially say "Court, you will have blood on your hands if you grant this TRO," it's not something I take kindly to.

Given my ruling, I don't think I need to reach the 271 argument, and I'm not going to.

Now the question is bond. The up-front consideration in the deal is $250 million in cash. Consistent with their simplistic approach to other issues, the defendants have boldly asked for a bond equal to that full amount. That is indeed simplistic and also disproportionate because we're not talking about losing the entire deal forever. What we're talking is a short delay, and so what we're talking about is the time value of money of the benefits of the deal.

So if we use $250 million as the proxy for the immediate benefits of the deal, which is what the defendants are proposing, what we're really talking about is the lost time value and increased risk of losing that value. That is a fraction of

$250 million. Now, nobody's taken that realistic approach. The plaintiffs have been equally simplistic and just said "Hey, let's go nominal."

So I want to pull some rough numbers out of the air.

If I think that the $250 million, the time value of that and risk value of that is something like 10 percent, 15 percent on an annualized basis, I would dial that back down for a month, which is what we're talking about between now and a PI. So at $25 million to maybe $35 million for one year, you're looking at maybe $2 to $3 million over one month. I'm not being exact in these numbers because this is not an exact science.

Now I'll put our another data point, and that's the cost of a P.I., because what I'm trying to do is to protect the defendants against the ability to recover costs if they are wrongfully enjoined. We have high-priced legal talent here. So I will roughly estimate that the cost of a preliminary injunction over the next four weeks is probably going to be about a million bucks. Could be low, but that's what I'm going to use.

So given all that, I'm going to set

the bond at $1 million.

Now, I've made a couple references during this lengthy oral ruling to the 225 action and the status quo. Here's what I am highly inclined to do in that, recognizing that I've only got the one side's proposed form of order. But I think in this context I'm taking into account the fact that, one, the venBio nominees have been elected. In other words, they have majority stockholder votes in their favor. Two, Judge Stark has already determined that the bases for contesting that, at least at a preliminary stage, did not have a reasonable likelihood of success. Therefore, what I am going to do in terms of status quo order is to treat the venBio nominees and the three directors whose seats are contested based on the validity of the plurality bylaw as the status quo board pending the outcome of that action.

The status quo order that I would like you-all to agree on should limit this new board to conduct in the ordinary course of business absent consent or an application for good cause shown. What I want carved out of that status quo order is anything relating to Seattle Genetics. In other words, the

Seattle Genetics deal, where I have now put a TRO in place, should be handled in this proceeding, this case. This case is for Seattle Genetics. The TRO order in this case is going to govern the Seattle Genetics deal. If we get a preliminary injunction going forward, that will govern the Seattle Genetics deal.

As for the 225 action, as I say, my strong inclination is to have the postmeeting board for the status quo order be the four venBio folks and the three others, and then people can litigate to their heart's content what happens with this plurality bylaw.

I will also tell you that I am not inclined to deal with the 13D matters in this Court. This side of the room, you-all chose your forum, and you went federal. You said federal was the right place to hear that. Enjoy it. Judge Stark's a great judge. As I said, I'd rather be in front of him than me.

So the other things I'm happy to deal with here, but that's my inclination. Now, if, with that guidance, you-all can agree to something, that's great. We can avoid another hearing. If you can't

agree to something or if there's something that you believe is just so tremendously unjust about this or contrary to law that you want a different status quo outcome, fine. Put in your papers. We'll get together promptly. We'll have a hearing. But at least in terms of those things, that's what I think should happen in the 225 action and will hopefully help move things forward there.

All right. I have now talked for 50 minutes. You-all have been very kind in listening to me. I want to now ask for questions, recognizing that it may have been too much to take in all in one go in terms of having questions.

Mr. Teklits, it was your motion. I always start with the movant. What questions do you have in terms of anything that I can clarify?

MR. TEKLITS: I think we want to go back and consider this. What I can see the issues are going to arise is in the status quo order under 225 because -- I'm not sure it came through, but this is a Company that's going to be in need of financing. There's going to be important decisions that may have to be made over the next month. And I'm not sure we're going to be able to agree on a mechanism for

those to be made. So I don't think we can address them today but --

THE COURT: Okay.

MR. TEKLITS: -- I'm just warning Your Honor that that is likely to be in front of Your Honor.

THE COURT: That's a good heads up. And, look, as with anything, the status quo order is designed to set the initial framework and then, you know, you can apply to depart from that. Like, let's say you got a financing transaction. You can come in and say "We've got good cause to do it" or something like that. But we can take that up if we need to.

Any other questions from your side?

MR. TEKLITS: Oh, I assume we're just going to schedule the PI hearing with Your Honor's assistant.

THE COURT: Yeah. Why don't you-all work -- that's a good point. I mean, do your normal good Delaware thing. Get me a schedule. Don't let these forwarding guys go all nuts on you. Get a good, reasonable schedule. I've got another case right now where the forwarding counsel are going crazy. I need to get the Delaware folks back in the driver's seat.

I want your hands on the wheel.

MR. TEKLITS: Understood, Your Honor. That's all.

THE COURT: Mr. Reed, questions from your side?

MR. REED: I don't. I heard everything Your Honor said. I am going to go back. I'm going to look at the draft paper that's on my desk and see whether there's anything in it that warrants putting it in front of Your Honor on the status quo preliminary determination that Your Honor made. And if I think there isn't, we'll work something out.

THE COURT: Great. Thank you.

Mr. Frawley.

MR. FRAWLEY: Thank you, Your Honor. Nothing for Seattle Genetics.

THE COURT: All right, great. Well, thank you, everyone, for your time today, for your presentations, and most of all for listening to me for the past 50 minutes. I hope everyone has a good rest of the day.

We stand in recess.

(Court adjourned at 12:41 p.m.)

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CERTIFICATE

I, NEITH D. ECKER, Chief Realtime Court Reporter for the Court of Chancery of the State of Delaware, Registered Diplomate Reporter, Certified Realtime Reporter, and Delaware Notary Public, do hereby certify that the foregoing pages numbered 3 through 38 contain a true and correct transcription of the rulings as stenographically reported by me at the hearing in the above cause before the Vice Chancellor of the State of Delaware, on the date therein indicated, which were revised by the Vice Chancellor.

IN WITNESS WHEREOF I have hereunto set my hand at Wilmington, this 9th day of March 2017.

/s/ Neith D. Ecker

Chief Realtime Court Reporter
Registered Diplomate Reporter
Certified Realtime Reporter
Delaware Notary Public